



## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-502]

#### **Welded Carbon Steel Standard Pipes and Tubes from India: Notice of Court Decision Not in Harmony with the Final Results of Antidumping Administrative Review; Notice of Amended Final Results**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On October 24, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Garg Tube Export LLP and Garg Tube Limited v. United States*, Court No. 20-00026, sustaining the U.S. Department of Commerce's (Commerce) second results of redetermination pertaining to the administrative review of the antidumping duty (AD) order on welded carbon steel standard pipes and tubes (pipe and tube) from India covering the period May 1, 2017, through April 30, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the weighted-average dumping margin assigned to Garg Tube Export LLP and Garg Tube Limited (collectively, Garg Tube).

**DATES:** Applicable November 3, 2022.

**FOR FURTHER INFORMATION CONTACT:** Dmitry Vladimirov, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0665.

## SUPPLEMENTARY INFORMATION:

### Background

On January 16, 2020, Commerce published its *Final Results* of the 2017-2018 AD administrative review of welded carbon steel standard pipes and tubes from India.<sup>1</sup> In the *Final Results*, Commerce found that a particular market situation (PMS) existed in India concerning the cost of hot-rolled coil (an input into pipe and tube) and adjusted Garg Tube's reported cost of production (COP) to account for this PMS.<sup>2</sup> Separately, Garg Tube purchased subject merchandise from several unaffiliated suppliers and Commerce requested COP information from two of Garg Tube's unaffiliated suppliers of pipe and tube, in response to which each supplier refused to provide the requested COP information. In the absence of COP information for the pipe and tube produced by these suppliers, Commerce filled the gap in the record (*i.e.*, the missing COP data of these suppliers) using Garg Tube's reported COP for the supplier-produced pipe and tube (which includes Garg Tube's acquisition costs, further processing, general and administrative expenses, and financial expenses), adjusted based on Garg Tube's sale of the supplier-produced pipe and tube which realized the largest loss.<sup>3</sup>

Garg Tube appealed Commerce's *Final Results*. On July 9, 2021, the CIT remanded the *Final Results* to Commerce for further explanation or reconsideration, holding that: (1) Commerce is not authorized under the statute to make a particular market situation (PMS) adjustment to a respondent's COP for purposes of determining which of its home market sales were made below cost; and (2) it was not reasonably discernable from Commerce's analysis in the *Final Results* how it was applying partial adverse facts available under section 776 of the

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<sup>1</sup> See *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2715 (January 16, 2020) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

<sup>2</sup> See *Final Results* IDM at Comment 1.

<sup>3</sup> *Id.* at Comment 2.

Tariff Act of 1930, as amended (the Act), concerning missing COP data for a certain unaffiliated and uncooperative supplier.<sup>4</sup>

In its *First Redetermination*, issued in October 2021, Commerce recalculated Garg Tube's weighted-average dumping margin by: (1) reversing a PMS adjustment to Garg Tube's COP for purposes of the sales-below-cost test; and (2) relying on neutral facts available to fill the COP gap caused by a certain supplier's non-cooperation.<sup>5</sup> In its *First Redetermination*, Commerce continued to find that a PMS existed in India during the POR concerning the price of hot-rolled coil and continued to apply a PMS adjustment when calculating the COP where normal value (NV) was based on constructed value (CV).<sup>6</sup>

The CIT remanded for a second time, ordering Commerce to further explain or reconsider how its finding that a PMS existed during the POR was supported by substantial evidence, and its resultant use of a PMS adjustment to COP when determining NV on the basis of CV.<sup>7</sup> In its *Second Redetermination*, Commerce declined to find that a PMS existed in India during the POR with respect to the price of hot-rolled coil and, as a result, recalculated Garg Tube's weighted-average dumping margin by removing the PMS adjustment when calculating normal value based on constructed value.<sup>8</sup> Because of its negative PMS finding, Commerce deemed moot the remaining remanded issues concerning its calculation of the PMS adjustment.<sup>9</sup> The CIT sustained Commerce's *Second Redetermination*.<sup>10</sup>

### Timken Notice

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<sup>4</sup> See *Garg Tube Export LLP v. United States*, 527 F. Supp. 3d 1362 (CIT 2021) (*Garg Tube I*).

<sup>5</sup> See *Final Results of Redetermination Pursuant to Remand, Garg Tube Export LLP and Garg Tube Limited v. United States*, Court No. 20-00026, Slip Op. 21-83 (CIT October 7, 2021) (*First Redetermination*), available at <https://access.trade.gov/Resources/remands/21-83.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> See *Garg Tube Export LLP v. United States*, 569 F. Supp. 3d 1202 (CIT 2022) (*Garg Tube II*).

<sup>8</sup> See *Final Results of Redetermination Pursuant to Remand, Garg Tube Export LLP and Garg Tube Limited v. United States*, Court No. 20-00026, Slip Op. 22-18 (CIT March 11, 2022) (*Second Redetermination*), available at <https://access.trade.gov/Resources/remands/22-18.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> See *Garg Tube Export LLP and Garg Tube Limited v. United States*, Court No. 20-00026, Slip Op. 22-120 (CIT October 24, 2022).

In its decision in *Timken*,<sup>11</sup> as clarified by *Diamond Sawblades*,<sup>12</sup> the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Act, Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s October 24, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce’s *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

#### Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Garg Tube as follows:

<b>Producer or Exporter</b>	<b>Weighted-Average Dumping Margin (percent)</b>
Garg Tube Export LLP and Garg Tube Limited	0.00

#### Cash Deposit Requirements

Because Garg Tube has a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

#### Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: were produced and/or exported by Garg Tube and were entered, or withdrawn from warehouse, for consumption during the period May 1, 2017, through April 30, 2018. These entries will

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<sup>11</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>12</sup> See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise produced and/or exported by Garg Tube, in accordance with 19 CFR 351.212(b). Because Garg Tube's *ad valorem* assessment rate is zero,<sup>13</sup> we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Unchanged from the *Final Results*, for entries of subject merchandise during the period of review produced by Garg Tube Limited or Garg Tube Export LLP for which neither company knew its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.<sup>14</sup>

#### Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e), and 777(i)(1) of the Act.

Dated: October 26, 2022.

**Lisa W. Wang,**

*Assistant Secretary*

*for Enforcement and Compliance.*

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<sup>13</sup> See 19 CFR 351.106(c)(2).

<sup>14</sup> For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).